

## FACT SHEET

# **Americans with Disabilities Act - Title II affecting state and local governments An Overview (Public Law 101-336)**

### **Who is covered by Title II of the ADA?**

The Title II regulations cover "public entities" and became effective on January 26, 1992.

"Public entities" include any state or local government and any of its departments, agencies, or other instrumentalities.

All activities, services, and programs of public entities are covered, including activities of state legislatures and courts, town meetings, police and fire departments, motor vehicle licensing, and employment. Unlike Section 504 of the Rehabilitation Act of 1973, which only covers programs receiving Federal financial assistance, Title II extends to all the activities of state and local governments, whether or not they receive Federal funds.

Public transportation services operated by state and local governments are also covered by Title II. Regulations of the U.S. Department of Transportation establish specific requirements for transportation vehicles and facilities, including a requirement that all new buses must be equipped to provide services to people who use wheelchairs.

### **General Requirements**

State and local governments may not refuse to allow a person with a disability to participate in a service, program, or activity because the person has a disability.

Programs and services must be provided in an integrated setting, unless separate or different measures are necessary to ensure an equal opportunity.

State and local governments must eliminate unnecessary eligibility standards or rules that deny individuals with disabilities an equal opportunity to enjoy their services, programs or activities unless they are "necessary" for the provision of the service, program, or activity.

Requirements that tend to screen out individuals with disabilities, such as requiring a driver's license as the only acceptable means of identification, are also prohibited.

Safety requirements that are necessary for the safe operation of the program in question, such as requirements for eligibility for a driver's license, may be imposed if they are based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities.

State and local governments are required to make reasonable modifications in policies, practices, and procedures that deny equal access to individuals with disabilities, unless a fundamental alteration in the program would result.

Auxiliary aids and services must be furnished when necessary to ensure effective communication, unless an undue burden or fundamental alteration would result.

State and local governments may provide special benefits, beyond those required by the regulation, to individuals with disabilities.

Special charges may not be placed on individuals with disabilities to cover the costs of measures necessary to ensure nondiscriminatory treatment, such as making modifications required to provide program accessibility or providing qualified interpreters.

State and local governments shall operate their programs so that, when viewed in their entirety, they are readily accessible to and usable by individuals with disabilities.

### **Qualified Individuals with Disabilities**

Title II of the Americans with Disabilities Act provides comprehensive civil rights protections for "qualified individuals with disabilities."

An "individual with a disability" is a person who

- has a physical or mental impairment that substantially limits a "major life activity,"
- has a record of such an impairment, or
- is regarded as having such an impairment.

Physical or mental impairments include, but are not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy; epilepsy; muscular dystrophy; multiple sclerosis; cancer; heart disease; diabetes; mental retardation; emotional illness; specific learning disabilities; HIV disease (whether symptomatic or asymptomatic); tuberculosis; drug addiction; and alcoholism. Homosexuality and bisexuality are not physical or mental impairments under the ADA.

"Major life activities" include functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

Individuals who currently engage in the illegal use of drugs are not protected by the ADA when an action is taken on the basis of their current illegal use of drugs.

A "qualified" individual with a disability is one who meets the essential eligibility requirements for the program or activity offered by a public entity. The "essential eligibility requirements" will depend on the type of service or activity involved. For some activities, such as state licensing programs, the ability to meet specific skill and performance requirements may be "essential." For other activities, such as where the public entity provides information to anyone who requests it, the "essential eligibility requirements" would be minimal.

## **Program Access**

State and local governments must ensure that individuals with disabilities are not excluded from services, programs, and activities because buildings are inaccessible.

Physical barriers, such as stairs, in all existing buildings, need not be removed, as long as state and local governments make their programs accessible to individuals who are unable to use an inaccessible existing facility.

Services, programs, and activities may be offered in the facility to individuals with disabilities through alternative methods, if physical barriers are not removed. Examples include

- relocating a service to an accessible facility (e.g., moving a public information office from the third floor to the first floor of a building);
- providing an aide or personal assistant to enable an individual with a disability to obtain the service; and
- providing benefits or services at an individual's home, or at an alternative accessible site.

Carrying an individual with a disability as a method of providing program access is not permissible, except in "manifestly exceptional" circumstances.

State and local governments are not required to take any action that would result in a fundamental alteration in the nature of the service, program, or activity or in undue financial and administrative burdens. However, public entities must take any other action, if available, that would not result in a fundamental alteration or undue burdens, but would ensure that individuals with disabilities receive the benefits or services.

## **Integrated Programs**

Public entities may not provide services or benefits to individuals with disabilities through programs that are separate or different, unless the separate programs are necessary to ensure that the benefits and services are equally effective.

Even when separate programs are permitted, an individual with a disability still has the right to choose to participate in the regular program. State and local governments may not require an individual with a disability to accept a special accommodation or benefit if the individual chooses not to accept it.

## **Communications**

State and local governments must ensure effective communication with individuals who have disabilities.

Where necessary to ensure that communications with individuals who have hearing, vision, or speech impairments are as effective as communications with others, the public entity must provide appropriate auxiliary aids.

"Auxiliary aids" include such services or devices as qualified interpreters, assistive listening headsets, television captioning and decoders, telecommunications devices for deaf persons (TDD's), videotext displays, readers, taped texts, Brailled materials, and large print materials.

A public entity may not charge an individual with a disability for the use of an auxiliary aid.

Telephone emergency services, including 911 services, must provide direct access to individuals with speech or hearing impairments.

Public entities are not required to provide auxiliary aids that would result in a fundamental alteration in the nature of a service, program, or activity or in undue financial and administrative burdens. However, public entities must still furnish another auxiliary aid, if available, that does not result in a fundamental alteration or an undue burden.

### **New Construction and Alterations**

Public entities must ensure that newly constructed buildings and facilities are free of architectural and communication barriers that restrict access or use by individuals with disabilities.

When a public entity undertakes alterations to an existing building, it must also ensure that the altered portions are accessible.

The ADA does not require retrofitting of existing buildings to eliminate barriers, but does establish a high standard of accessibility for new buildings.

Public entities may choose between two technical standards for accessible design: The Uniform Federal Accessibility Standard (UFAS), or the Americans with Disabilities Act Accessibility Guidelines (minus the elevator exemption for small buildings).

### **Enforcement**

Private parties may bring lawsuits to enforce their rights under Title II of the ADA. The remedies available are the same as those provided under Section 504 of the Rehabilitation Act of 1973. A reasonable attorney's fee may be awarded to the prevailing party.

Individuals may also file complaints with appropriate administrative agencies. The regulation designates eight Federal agencies to handle complaints filed under Title II.

### **Complaints**

Any individual who believes that she or he is a victim of discrimination prohibited by the regulation may file a complaint. Complaints on behalf of classes of individuals are also permitted.

Complaints should be in writing, signed by the complainant or an authorized representative, and should contain the complainant's name and address and describe the public entity's alleged discriminatory action.

Complaints may be sent to the address below.

Disability Rights Section  
Civil Rights Division  
U.S. Department of Justice  
P.O. Box 66738  
Washington, D.C. 20035-6738

*The above information was summarized and excerpted from fact sheets prepared by the U.S. Department of Justice.*

### **DISABILITY AND COMMUNICATION ACCESS BOARD**

<b>Oahu:</b>	<b>586-8121</b>	<b>(Voice/TDD)</b>
	<b>586-8129</b>	<b>(FAX)</b>
<b>Maui:</b>	<b>984-8219</b>	<b>(Voice/TDD)</b>
<b>Kauai:</b>	<b>274-3308</b>	<b>(Voice/TDD)</b>
<b>Big Island:</b>	<b>322-4841</b>	<b>(Voice Mail)</b>

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